

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DR. HANSEL M. DEBARTOLO

Plaintiff,

v.

XO COMMUNICATIONS SERVICES, INC.

Defendant.

Case No: 07 C 6967

Judge Charles P. Kocoras

Courtroom 1725

Magistrate Judge Geraldine Soat Brown

Courtroom 1812

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**MOTION FOR JUDGMENT ON THE PLEADINGS**

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Defendant, XO Communications, Inc., incorrectly sued as XO Communications Services Inc. (“XO”), pursuant to Rule 12(c), Fed. R. Civ. P., moves this court to enter judgment on the pleadings in its favor on each count of the Complaint. For the reasons set forth in the attached Memorandum of Law, plaintiff cannot prove any facts to establish his claim for benefits under the Employee Retirement Income Security Act, 29 U.S.C. 1132 (“ERISA”), because he has not sued the Plan, nor can he establish his estoppel and misrepresentation claims because both claims are preempted by ERISA.

Respectfully submitted,

s/Lynn U. Thorpe

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: [thoevel@hoevellaw.com](mailto:thoevel@hoevellaw.com) and I certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A.

s/Lynn U. Thorpe  
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**ATTORNEYS FOR DEFENDANT**